

House Bill 940

By: Representatives Hugley of the 133rd and Morgan of the 39th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia
2 Annotated, relating to discipline of students in elementary and secondary education, so as to
3 enact the "Jaheem Herrera-Bianca Walton Safe School Climate Act"; to provide for
4 legislative findings and intent; to provide for definitions; to prohibit bullying, harassing, or
5 intimidating behavior on school property and at other school related events; to provide that
6 each local board of education shall establish a policy relating to bullying behavior; to require
7 certain provisions in the policy; to provide for training on bullying behavior for school
8 system personnel; to provide for a model bullying policy by the State Board of Education;
9 to provide for statutory construction; to revise provisions for purposes of conformity; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be cited as the "Jaheem Herrera-Bianca Walton Safe
14 School Climate Act."

15 **SECTION 2.**

16 (a) The Georgia General Assembly finds that:

- 17 (1) A safe and civil environment in school is necessary in order for students to learn and
18 achieve high academic standards;
- 19 (2) Bullying, harassment, and intimidation, like other disruptive or violent behaviors, is
20 conduct that disrupts both a student's ability to learn and a school's ability to educate its
21 students in a safe environment;
- 22 (3) Bullying, harassing, and intimidating behaviors create a climate that fosters violence
23 in our schools;
- 24 (4) It is essential to enact a law that seeks to protect the health and welfare of Georgia
25 students and improve the learning environment for Georgia students; and

(5) To do so, state and national data and anecdotal evidence have established the need to identify the most vulnerable targets and potential victims of bullying, harassment, and intimidation.

(b) The sole purpose of this law is to protect all children from bullying, harassment, and continual intimidation and no other legislative purpose is intended nor should any other intent be construed from passage of this Act.

SECTION 3.

Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to discipline of students in elementary and secondary education, is amended by repealing Code Section 20-2-751.4, relating to policies prohibiting bullying, assignment to alternative school, and notice, in its entirety and reserving said Code section as follows:

"20-2-751.4.

~~(a) As used in this Code section, the term "bullying" means:~~

~~(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so; or~~

~~(2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm.~~

~~(b) Each local board of education shall adopt policies, applicable to students in grades six through 12, that prohibit bullying of a student by another student and shall require such prohibition to be included in the student code of conduct for middle and high schools in that school system. Local board policies shall require that, upon a finding that a student has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school. Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each middle and high school and by including such information in student and parent handbooks.~~

~~(c) Any school system which is not in compliance with the requirements of this Code section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and 20-2-260. Reserved."~~

SECTION 4.

Said part is further amended in Code Section 20-2-751.5, relating to student codes of conduct, safety rules on school buses, and distribution, by revising subsections (a) and (b) as follows:

"(a) Each student code of conduct shall contain provisions that address the following conduct of students during school hours, at school related functions, and on the school bus in a manner that is appropriate to the age of the student:

(1) Verbal assault, including threatened violence, of teachers, administrators, and other school personnel;

(2) Physical assault or battery of teachers, administrators, and other school personnel;

(3) Disrespectful conduct toward teachers, administrators, and other school personnel, including use of vulgar or profane language;

(4) Verbal assault of other students, including threatened violence or sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;

(5) Physical assault or battery of other students, including sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;

(6) Disrespectful conduct toward other students, including use of vulgar or profane language;

(7) Verbal assault of, physical assault or battery of, and disrespectful conduct, including use of vulgar or profane language, toward persons attending school related functions;

(8) Failure to comply with compulsory attendance as required under Code Section 20-2-690.1;

(9) Willful or malicious damage to real or personal property of the school or to personal property of any person legitimately at the school;

(10) Inciting, advising, or counseling of others to engage in prohibited acts;

(11) Marking, defacing, or destroying school property;

(12) Possession of a weapon, as provided for in Code Section 16-11-127.1;

(13) Unlawful use or possession of illegal drugs or alcohol;

(14) Willful and persistent violation of the student code of conduct;

(15) Bullying, harassing, or intimidating behavior as defined by Code Section ~~20-2-751.4~~ 20-2-760;

(16) Marking, defacing, or destroying the property of another student; and

(17) Falsifying, misrepresenting, omitting, or erroneously reporting information regarding instances of alleged inappropriate behavior by a teacher, administrator, or other school employee toward a student.

With regard to paragraphs (9), (11), and (17) of this subsection, each student code of conduct shall also contain provisions that address conduct of students during off-school hours.

(b)(1) In addition to the requirements contained in subsection (a) of this Code section, each student code of conduct shall include comprehensive and specific provisions

prescribing and governing student conduct and safety rules on all public school buses.

The specific provisions shall include but not be limited to:

(A) Students shall be prohibited from acts of physical violence as defined by Code Section 20-2-751.6, bullying, harassing, or intimidating behavior as defined by ~~subsection (a) paragraph (1) of Code Section 20-2-751.4~~ 20-2-760, physical assault or battery of other persons on the school bus, verbal assault of other persons on the school bus, disrespectful conduct toward the school bus driver or other persons on the school bus, and other unruly behavior;

(B) Students shall be prohibited from using any electronic devices during the operation of a school bus, including but not limited to cell phones; pagers; audible radios, tape or compact disc players without headphones; or any other electronic device in a manner that might interfere with the school bus communications equipment or the school bus driver's operation of the school bus; and

(C) Students shall be prohibited from using mirrors, lasers, flash cameras, or any other lights or reflective devices in a manner that might interfere with the school bus driver's operation of the school bus.

(2) If a student is found to have engaged in physical acts of violence as defined by Code Section 20-2-751.6, the student shall be subject to the penalties set forth in such Code section. If a student is found to have engaged in bullying, harassing, or intimidating behavior as defined by ~~subsection (a) paragraph (1) of Code Section 20-2-751.4~~ 20-2-760 or in physical assault or battery of another person on the school bus, the local school board policy shall require a meeting of the parent or guardian of the student and appropriate school district officials to form a school bus behavior contract for the student. Such contract shall provide for progressive age-appropriate discipline, penalties, and restrictions for student misconduct on the bus. Contract provisions may include but shall not be not limited to assigned seating, ongoing parental involvement, and suspension from riding the bus. This subsection is not to be construed to limit the instances when a school code of conduct or local board of education may require use of a student bus behavior contract."

SECTION 5.

Said part is further amended by adding a new subpart to read as follows:

"Subpart 2A

20-2-760.

As used in this part, the term:

(1) 'Bullying, harassing, or intimidating behavior' or 'act of bullying, harassment, or intimidation' means any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at an official school bus stop, at any school sponsored activity or event whether or not it is held on school premises, or on a school bus or any other school related vehicle, or at any other program or function where the school is responsible for the child, and that:

(A) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(B) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits.

This term includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

(2) 'Hostile environment' means that the victim subjectively views the conduct as bullying, harassing, or intimidating behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying, harassing, or intimidating behavior.

20-2-761.

(a) No student or school employee shall be subjected to bullying, harassing, or intimidating behavior by school employees or students.

(b) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person who has or reports reliable information about an act of bullying, harassing, or intimidating behavior.

(c) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying, harassing, or intimidating behavior shall report the incident to the appropriate school official.

(d) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying, harassing, or intimidating behavior shall report the incident to the appropriate school official.

20-2-762.

(a) No later than December 31, 2010, each local board of education shall adopt a policy prohibiting bullying, harassing, or intimidating behavior. The local board shall involve parents and guardians, school employees, school administrators, school volunteers, students, administrators, law enforcement representatives, and community representatives in the process of creating the policy. Policies adopted pursuant to this Code section shall be continuously reviewed and may be revised as necessary.

(b) The policy shall contain, at a minimum, the following components:

(1) A statement prohibiting bullying, harassing, or intimidating behavior;

(2) A definition of bullying, harassing, or intimidating behavior no less inclusive than that set forth in this part;

(3) A description of appropriate student behavior;

(4) Consequences and appropriate remedial action for a person who commits an act of bullying, harassment, or intimidation. Each local board shall determine appropriate consequences; provided, however, that local board policies shall require that, upon a finding that a student in grades six through 12 who has committed the offense of bullying for the third time in a school year shall be assigned to an alternative school;

(5) A procedure for reporting and documenting an act of bullying, harassment, or intimidation including a provision that permits a person to report such an act anonymously. The procedures shall identify the appropriate school personnel responsible for receiving a report. This paragraph shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report;

(6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying, harassment, or intimidation, identifying either the principal or the principal's designee as the person responsible for the investigation;

(7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying, harassment, or intimidation, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;

(8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school sponsored functions;

(9) A process for discussing the school system's bullying, harassing, or intimidating behavior policy with students;

(10) A strategy for protecting the victim from additional bullying, harassing, or intimidating behavior and from retaliation following a report; and

(11) Consequences and appropriate remedial action for persons found to have falsely accused another.

(c) Nothing in this part shall prohibit a local school system from adopting a policy that includes components beyond the minimum components provided in this Code section or that is more inclusive than the requirements of this part.

(d) Notice of the local policy shall appear in the student code of conduct established pursuant to Code Section 20-2-751.5 and any other school publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school and in any student and school employee handbook.

(e) Information regarding the local policy against bullying, harassing, or intimidating behavior shall be incorporated into a school's employee training program.

(f) To the extent funds are appropriated for these purposes, a local school system shall, by March 1, 2011, provide training on the local policy to school employees and volunteers who have significant contact with students.

(g) Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying, harassing, or intimidating behavior.

(h) Local boards of education may establish bullying prevention programs or other initiatives and may involve parents and guardians, school employees, school administrators, school volunteers, students, administrators, law enforcement representatives, and community representatives.

(i) To assist local boards of education in developing a policy pursuant to this Code section, the State Board of Education shall, no later than September 1, 2010, develop model policies applicable to students in kindergarten through grade 12 and teacher preparation program standards on the identification and prevention of bullying, harassing, or intimidating behavior. In addition, the state board shall provide necessary training programs and technical assistance to school systems in carrying out the requirements of this part.

20-2-763.

(a) This part shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that could accompany an unpopular viewpoint.

(b) This part shall not be construed to prevent a victim of bullying, harassing, or intimidating behavior from seeking redress under any other available law, either civil or criminal.

(c) This part shall not be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying, harassing, or intimidating behavior.

233 (d) This part shall not be construed to create or alter any civil cause of action for monetary
234 damages against any person or school system nor shall it constitute grounds for any claim
235 or motion raised by either the state or defendant in any proceedings, except that the defense
236 of immunity shall be retained and may be asserted in any action arising out of this part.
237 (e) The provisions of this part shall be liberally construed to give effect to its purposes.
238 (f) Nothing in this part shall be construed to create any classification, protected class,
239 suspect category, or preference beyond those existing in present statute or case law."

240 **SECTION 6.**

241 All laws and parts of laws in conflict with this Act are repealed.